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Jackie Tanda

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

Date: October 10, 2006

Jennie CHING, et al.

Confirmation No. 4574

Serial No: 09/784,865

Group Art Unit: 2162

Filed: February 15, 2001

Examiner: Jean B. FLEURANTIN

For: METHOD AND SYSTEM FOR FILE SYSTEM SYNCHRONIZATION
BETWEEN A CENTRAL SITE AND A PLURALITY OF REMOTE SITES

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF UNDER 37 C.F.R. § 41.41

Dear Sir or Madam:

Pursuant to 37 C.F.R. § 41.41, Appellant submits this Reply Brief in response to the Examiner's Answer mailed on August 10, 2006.

I. REAL PARTY IN INTEREST

A statement identifying the real party in interest is contained in the Appeal Brief.

II. RELATED APPEALS AND INTERFERENCES

A statement identifying the related appeals and interferences is contained in the Appeal Brief.

III. STATUS OF CLAIMS

A statement identifying the status of the claims is contained in the Appeal Brief.

IV. STATUS OF AMENDMENTS

A statement identifying the status of amendments is contained in the Appeal Brief.

V. SUMMARY OF CLAIMED SUBJECT MATTER

A summary of the claimed subject matter is contained in the Appeal Brief.

VI. GROUND S OF REJECTION TO BE REVIEWED ON APPEAL

A statement identifying the grounds of rejection to be reviewed on appeal is contained in the Appeal Brief.

VII. RESPONSE TO EXAMINER'S ANSWER

A. Examiner's 1st Response

In response to Appellant's argument that the cited references do not, alone or in combination, disclose, teach, or suggest "determining within the central site which of the files needs to be sent to each of the plurality of remote sites," as recited in claims 1-6 and 10-15, the Examiner states:

Bell discloses a database synchronization system, a plurality of remotes database systems, wherein the central computer synchronizes with the data into

databases stored in the storage devices (remote computers); see col. 44-51. Further, in column 2, lines 38-48, Bell discloses the task of creating files from the database of change distributed across available resources.

Furthermore, Gayman discloses a method for transferring file from a central server to client machines over a computer network; see col. 7, lines 9-14. Further, see column 8, lines 19-28, Gayman discloses the central server determines the transmission of file.

(August 10, 2006 Examiner's Answer, pg. 6).

Bell is directed to "a database synchronization system capable of efficiently synchronizing a central database with one or more remote databases" (col. 2, lns. 7-9 of Bell).

The cited passage of Bell states:

The database synchronization system and method of the present invention includes a data extract and transfer application stored on one or more remote computers. The audit trail files, which are generated by the remote computers are first read and processed by a migrator application. The migrator application creates a database of change from the updates, additions, and deletions recorded in the audit trail files. When the database change reaches a size threshold, the data extract and transfer application shuts down the migrator application and renames the database of change. The data extract and transfer application restarts the migrator application so that the migrator application can create another database of change while the renamed database of change is being processed by the data extract and transfer application.

The data extract and transfer application creates a series of flat files from the renamed database of change. The task of creating these files is distributed across the CPUs and storage devices of the remote computers. Because each remote computer has a plurality of CPUs and associated storage devices, the task of creating the flat files from the database of change can be distributed across these available resources. Before assigning a CPU the task of building a flat file on a particular storage device, the data extract and transfer application first determines whether the CPU is operational and whether the associated storage device has available storage space.

The flat files created by the data extract and transfer application are transferred according to a predetermined file transfer protocol across a communications line to the central computer. If the communications line fails during the transfer operation, the data extract and transfer application attempts to repeat the transfer of the flat files until the communications line becomes operational. Once the flat files have been transferred to the central computer, the data extract and transfer application drops the renamed database of change and purges the flat files.

(Col. 2, Ins. 22-58 of Bell) (emphasis added). Thus, as seen from above, it is the remote computers in Bell that are transferring files to the central computer, not the other way around.

In addition, Bell makes it clear that the task of creating flat files from database changes occur within the remote computers, not the central computer. Further, changes to data first occur on the remote computers in Bell, which are then sent from the remote computers to the central computer. Given that the remote computers in Bell have the original data and therefore, should not be missing any data, there is no reason for the central computer in Bell to determine which files need to be sent to each remote computer, especially since, as noted above, the remote computers are the ones sending files to the central computer, not the other way around.

Accordingly, Bell fails to disclose, teach, or suggest “determining within the central site which of the files needs to be sent to each of the plurality of remote sites,” as recited in claims 1-6 and 10-15.

Gayman is directed to “a cyclic multicasting of an image file from a central data provider to one or more client machines over a computer network” (col. 2, Ins. 18-20 of Gayman). Gayman defines an image file as “a single file that contains the contents of an entire disk, or selected partitions of the entire disk, and can be transferred or received in terms of packets of data in no particular order” (col. 5, Ins. 21-24 of Gayman).

Although Gayman discloses the central data provider sending an image file to client machines, it does not disclose, teach, or suggest that the central data provider determines which files needs to be sent to each client machine. Nor is it inherent in Gayman that the central data provider makes such a determination. Under M.P.E.P. § 2163.07:

To establish inherency, the extrinsic evidence “must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.” *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999).

(M.P.E.P. § 2163.07, 8th ed., 4th rev.). Since each client machine in Gayman downloads the same image file from the central data provider, as clearly seen in Figures 8-9 of Gayman, it is not necessary for the central data provider to determine which files needs to be sent to each of the client machines.

Accordingly, Gayman also fails to disclose, teach, or suggest “determining within the central site which of the files needs to be sent to each of the plurality of remote sites,” as recited in claims 1-6 and 10-15. Therefore, even if Bell were combined with Gayman, the combination would neither teach nor suggest the claim element.

B. Examiner's 2nd Response

The Examiner states in the Examiner's Answer:

In response to applicant's argument, page 9, second paragraph, that Gayman does not combine with Bell in a manner that results in any teaching or suggestion of the recited step of providing a list of files to the plurality of remote sites by the central site prior to a callback time of the remote sites. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Bell does not explicitly disclose providing a list of files to the plurality of remote sites by the central site, prior to a callback time of the remote sites. However, Gayman discloses providing a list of files to the plurality of remote sites by the central site, prior to a callback time of the remote sites (see Gayman col. 11, line 60 to col. 12, line 4). It would have been obvious to a person of ordinary skill in the art at the

time the invention was made to modify the method of Bell by providing a list of files to the plurality of remote sites by the central site, prior to a callback time of the remote sites as disclosed by Gayman (see Gayman col. 11, line 46 to col. 12, line 4). Such a modification would allow the method of Bell to improve the accuracy and the reliability of the method and system for the file synchronization between a central site and plurality of remotes, therefore, to provide a distributing system updates over a computer network (see Gayman col. 1, line 33-34).

(August 10, 2006 Examiner's Answer, pgs. 6-7).

As noted above, Gayman discloses a central data provider sending an image file, which contains the contents of all or part of a disk, to client machines. Claims 1-15, however, recite providing or transmitting "a list of files." A "list of files" is not the files themselves.

In addition, Gayman states:

For example, as shown in FIG. 4, if a first client machine 430 from all remote client machines 430-448 on a computer network 412 signs on a cyclic multicast session and requests for a selected image file (FIG. 7) from a central data provider (server) 410, the central data provider (server) 410 immediately multicasts (sends) a copy of the selected image file to the first client machine 430 requesting for the cyclic multicast session over a computer network 412.

(Col. 6, lns. 34-41 of Gayman). Thus, the central data provider sends the image file in response to a request from a client machine. In contrast, claims 1-6 and 10-15 recites "providing a list of files to the plurality of remote sites by the central site, prior to a callback time of the remote sites" (emphasis added).

Accordingly, Gayman does not disclose, teach, or suggest "providing a list of files to the plurality of remote sites by the central site, prior to a callback time of the remote sites," as recited in claims 1-6 and 10-15, or "a central site, the central site including a file system synchronization (FSS) helper application and an automated central site operations (ACSO) mechanism for

transmitting a list of files,” as recited in claims 7-9. Therefore, even if Bell were combined with Gayman, the combination would neither teach nor suggest the claim elements.

C. Examiner’s 3rd Response

The Examiner states in the Examiner’s Answer:

In response to applicant’s argument, page 10, first paragraph, that the Bell and Gayman references fail to show certain features of applicant’s invention, it is noted that the features upon which applicant relies (i.e., provision/transmission of data from a central site prior to callback time of the remote sites) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

(August 10, 2006 Examiner’s Answer, pg. 7).

Claims 1-6 and 10-15 recite “providing a list of files to the plurality of remote sites by the central site, prior to a callback time of the remote sites” and claims 7-9 recite “a central site, the central site including a file system synchronization (FSS) helper application and an automated central site operations (ACSO) mechanism for transmitting a list of files.” As discussed above, Bell and Gayman do not, alone or in combination, disclose, teach, or suggest the claim elements.

D. Examiner’s 4th Response

The Examiner states in the Examiner’s Answer:

In response to applicant’s argument, page 10, second paragraph, that Bell, even when taken with Gayman fails to teach, show, or suggest the present invention as recited in independent claims 1 and 10. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Bell does not explicitly

disclose providing a list of files to the plurality of remote sites by the central site, prior to a callback time of the remote sites. However, Gayman discloses providing a list of files to the plurality of remote sites by the central site, prior to a callback time of the remote sites (see Gayman col. 11, line 60 to col. 12, line 4). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the method of Bell by providing a list of files to the plurality of remote sites by the central site, prior to a callback time of the remote sites as disclosed by Gayman (see Gayman col. 11, line 46 to col. 12, line 4). Such a modification would allow the method of Bell to improve the accuracy and the reliability of the method and system for the file synchronization between a central site and plurality of remotes, therefore, to provide a distributing system updates over a computer network (see Gayman col. 1, lines 33-34).

(August 10, 2006 Examiner's Answer, pg. 8).

As discussed above, Bell and Gayman do not, alone or in combination, disclose, teach, or suggest "providing a list of files to the plurality of remote sites by the central site, prior to a callback time of the remote sites," as recited in claims 1-6 and 10-15, or "a central site, the central site including a file system synchronization (FSS) helper application and an automated central site operations (AC'SO) mechanism for transmitting a list of files," as recited in claims 7-9.

E. Examiner's 5th Response

The Examiner states in the Examiner's Answer:

With respect to Appellant's argument that "Bell does not disclose providing a list of files by a central site." This is a mischaracterization of Examiner's statement. See the last Office Action, page 8, dated 01/26/05. The statement made by the Examiner is "Bell does not explicitly disclose steps of providing a list of files to the plurality of remote sites by the central site, prior to a callback time of the remote sites." The allegations made by the Applicant(s) is incorrect. Furthermore, Bell does not explicitly disclose steps of providing a list of files to the plurality of remote sites by the central site, prior to a callback time of the remote sites. However, Gayman providing a list of files to the plurality of remote sites by the central site, prior to a callback time of the remote sites (see Gayman col. 11, line 60 to col. 12, line 4). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the

method of Bell by providing a list of files to the plurality of remote sites by the central site, prior to a callback time of the remote sites as disclosed by Gayman (see Gayman col. 4, lines 4-21 and Fig. 3). Such a modification would allow the teachings of Bell to improve the accuracy and the reliability of the method and system for the file synchronization between a central site and plurality of remotes, therefore, to provide a distributing system updates over a computer network (Gayman col. 1, lines 33-34).

MPEP 2111: During patent examination, the pending claims must be "given the broadest reasonable interpretation consistent with the specification" Applicant always has the opportunity to amend the claims during prosecution and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 162 USPQ 541, 550-51 (CCPA 1969). The court found that applicant was advocating . . . the impermissible importation of subject matter from the specification into the claim. See also In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997) (The court held that the PTO is not required, in the course of prosecution, to interpret claims in applications in the same manner as a court would interpret claims in an infringement suit. Rather the "PTO applies to verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definition or otherwise that may be afforded by the written description contained in application's specification.").

The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. In re Cortright, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999).

(August 10, 2006 Examiner's Answer, pgs. 9-10).

Although claims are to be "given the broadest reasonable interpretation consistent with the specification," as noted by the Examiner, "[t]he broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach," which was also noted by the Examiner. One of skill in the art would not construe "a list of files" to be the files themselves.

In addition, claims 1-6 and 10-15 recites "providing a list of files to the plurality of remote sites by the central site, prior to a callback time of the remote sites" (emphasis added).

The Examiner cannot construe the claims so broadly as to read “prior to a callback time of the remote sites” out of the claims.

As discussed above, Bell and Gayman do not, alone or in combination, disclose, teach, or suggest “providing a list of files to the plurality of remote sites by the central site, prior to a callback time of the remote sites,” as recited in claims 1-6 and 10-15, or “a central site, the central site including a file system synchronization (FSS) helper application and an automated central site operations (ACSO) mechanism for transmitting a list of files,” as recited in claims 7-9.

F. Examiner's Lack of Response

The Examiner did not address Appellant’s argument that Bell and Gayman, do not alone or in combination, disclose, teach, or suggest “reporting which of the files are missing by each of the plurality of remote sites to the central site,” as recited in claims 1-6 and 10-15.

As discussed in the Appeal Brief, Appellant fails to see how the audit trail files stored on the remote computers in Bell has anything to do with files that may be missing from the remote computers. Bell defines audit trail files as files that “provide a record of the database transactions for each of the databases stored on the data storage devices” (col. 3, lns. 55-57 of Bell). Appellant also fails to see how retransmission of flat files from the remote computers to the central computer in Bell is in any way related to “reporting which of the files are missing by each of the plurality of remote sites to the central site,” as recited in claims 1-6 and 10-15.

Since Gayman does not disclose, teach, or suggest, and the Examiner has not cited any passage of Gayman as disclosing, teaching, or suggesting, “reporting which of the files are


missing by each of the plurality of remote sites to the central site," as recited in claims 1-6 and 10-15, even if Bell were combined with Gayman, the combination would neither teach nor suggest the claim element.

CONCLUSION

On the basis of the above remarks, and the remarks made in the Appeal Brief, Appellant respectfully submits that the final rejection should be reversed.

Respectfully submitted,
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Dated: October 10, 2006



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VIII. APPENDIX OF CLAIMS

A listing of the claims involved on appeal is contained in the Appeal Brief.

IX. EVIDENCE APPENDIX

None

X. RELATED PROCEEDINGS APPENDIX

None